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No. 1269

In the Supreme Court of the United States

OCTOBER TERM, 1944

CHAMPLIN REFINING COMPANY, APPELLANT

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION OF THE UNITED STATES TO AFFIRM

MOTION TO AFFIRM

Appellee, United States of America, pursuant to Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States, moves that the decree of the district court be affirmed.

This is a direct appeal from the final decree, entered on April 16, 1945, of a specially constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's complaint to set aside an order of the Interstate Commerce Commission. Appeal was allowed on April 16, 1945, and appeal papers were served on April 21, 1945.

The Commission's order, dated June 12, 1944, required appellant to comply with the Commission's valuation procedure under Section 19a of the Interstate Commerce Act, as amended. This order was made in a proceeding which arose out of appellant's petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. Appellant's petition was filed following a demand by the Commission that valuation data be furnished to the Commission in accordance with its requirements applicable to carriers subject to the act.

Although appellant's assignment of errors contains 19 items, the only question in the case is whether

appellant is a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act, as amended, and hence subject to the valuation provisions of Section 19a of the act.

It is submitted that the appeal presents no substantial question and that the case at bar is controlled by two applicable decisions, *The Pipe Line Cases*, 234 U. S. 548, and *Valvoline Oil Company* v. *United States*, 308 U. S. 141. The facts are substantially undisputed. Appellant owns and operates a pipe line known as a "products" pipe line, which is used for transportation of refined petroleum products only. The pipe line extends from appellant's refinery at Enid, Oklahoma, to pipe line terminals at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. This pipe line is not used as a "crude oil" pipe line to bring crude oil to appellant's refinery from the wells. For that purpose appellant employs the line of a subsidiary corporation, which is admittedly a common carrier. Construction of the "products" pipe line involved in the case was originally undertaken by the subsidiary corporation, and a number of eminent domain proceedings were instituted. But this plan was abandoned prior to completion of the line, and settlements were made with the respective property owners. Title to the pipe line was taken by appellant before construction of the line was completed or it was used for the transportation of petroleum products. Appellant has had title to all products transported over the line, and has not transported products belonging to anyone else.

Appellant sells the products transported over the line in "spot-market" and "contract" sales, in both of which types of transactions the purchaser pays a price arrived at by adding to the refinery price at Enid, which is separately specified, an amount designated as a "differential." This "differential" is an amount equal to the through rail rate from Enid to purchaser's destination less the charges paid out by the purchaser for the short-haul transportation from appellant's pipe line terminal to destination. Other oil companies employ the same method of pricing their product, and occasional departures from the formula are made by appellant when necessary to meet competition.

Upon these facts, the Commission found that appellant was a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act as amended, and hence subject to the valuation provisions of Section 19a.

The pertinent statutory provision reads as follows:

> SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—
>
> * * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water;
>
> * * * * * *
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons natural or arti-

ficial, engaged in such transportation as aforesaid as common carriers for hire.

The effect of this language is to make the valuation and other provisions of the act applicable to "all pipe-line companies" which are "engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line." Appellant clearly is included within the statutory language. While it is true that the statute speaks of "common carriers" engaged in the transportation of certain commodities by pipe line, the statute also explains what that term means by supplying its own definition of the expression "common carrier." Inquiry into what was necessary or sufficient to establish the status of common carrier at common law is therefore irrelevant and superfluous.

An authoritative construction of the pertinent provision is furnished in the *Valvoline* case, where Mr. Justice Reed said:

> Section 1 (3) defines a common carrier to include "all pipe-line companies." If this definition is not limited by the subsequent clause "engaged * * * as common carriers for hire," extended consideration of these characteristics of a private carrier is unnecessary as the language of the definition is decisive.
>
> * * * * *
>
> As now written, the section brings railroads under the Act by means of the last clause of subsection (3) only. This clause is a con-

junctive, not a modifer. It does not affect the generality of the first clause as to pipe-line companies. (308 U. S. at 144, 145–6).

The *Valvoline* case, 308 U. S. 141, 145, likewise establishes that the present statutory language has the same meaning as the original provisions of the Hepburn Act of June 29, 1906, 34 Stat. 584, which was construed in *The Pipe Line Cases*, 234 U. S. 548, 559.

As originally enacted the provision making pipe lines common carriers read as follows:

> That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * * The term "common carrier" as used in this Act shall include express companies and sleeping car companies. (Hepburn Act of June 29, 1906, 34 Stat. 584.)

The language of the Hepburn Act was construed in *The Pipe Line Cases*, 234 U. S. 548, 559–60, as follows:

> The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words "who shall

> be considered and held to be common carriers within the meaning and purpose of this act" obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

It will be noticed that the provisions of the Interstate Commerce Act as amended by the Hepburn Act and construed in *The Pipe Line Cases*, applied to any person engaged in the transportation of oil or other commodity (except water and natural or artificial gas) by means of pipe lines. The law at that time did not contain the expression "pipe line companies." That wording first appeared in the language adopted in 1920. But if, as was held in the *Valvoline* case, the meaning of the Act remained unchanged, appellant cannot escape from the clear terms of the earlier version by reason of any ambiguity with respect to the meaning of the term "pipe line companies." However, no ambiguity exists. Appellant, owning and operating an interstate pipe line, is undoubtedly a pipe line company. This is obvious from the plain meaning of the language used, even apart from the authoritative determinations in the *Valvoline* and *The Pipe Line Cases* to the effect that the present statute has the same meaning as the earlier version, and that the earlier version included any person engaged in transportation by means of

pipe lines. Appellant's contention that it is not a pipe line company because it is also engaged in the refining business is untenable. The same argument was advanced in the *Valvoline* case and by the Tidewater Pipe Company, Ltd., in *The Pipe Line Cases*.

Appellant's ownership of the products transported is likewise not controlling. That circumstance was also present in the *Valvoline* and *The Pipe Line Cases*. Equally unavailing is appellant's argument that it is not a pipe line company, within the meaning of the act, because it was not until 1930, long after enactment of the statute, that pipe lines could be constructed which were capable of transporting the type of petroleum products handled by appellant. Since the provision of law covers "transportation of oil or other commodity, except water and except natural or artificial gas," appellant's contention is untenable. The fact that the statute contains the words "or other commodity" clearly destroys the force of appellant's argument.[1]

Since, by virtue of the statute itself, persons engaged in the transportation specified in Section 1 (1) (b) of the act are made common carriers, cases relied on by appellant (such as *Pennsylvania Railroad*

[1] "If Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators." *Barr* v. *United States*, No. 287, this Term, decided February 5, 1945 (slipsheet p. 5); *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 644; *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257; *Browder* v. *United States*, 312 U. S. 335, 339; *Ozawa* v. *United States*, 260 U. S. 178, 195–196; *Pickhardt* v. *Merritt*, 132 U. S. 252, 257.

Company v. *Public Utilities Commission of Ohio*, 298 U. S. 170) dealing with other types of transportation are not in point, because no similar statute is in effect with respect to such modes of transportation.

The legislative history of the Hepburn Act supports the judicial construction which has been given to it.

The provision including pipe lines was offered as an amendment by Senator Lodge of Massachusetts on May 4, 1906 (40 Cong. Rec. 6361).

Senator Foraker, of Ohio, thereupon stated:

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that is shall apply only to pipe lines operated for the public. I do not understand how you could compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private lines that an individual or a single corporation may have laid down and put into operation for its own benefit. * * * (40 Cong. Rec. 6361)

To this Senator Nelson of Minnesota replied that:

> if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public." (40 Cong. Rec. 6365)

Senator Lodge emphasized that:

> the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment. (40 Cong. Rec. 6367)

During the course of debate an unsuccessful attempt was made to amend Senator Lodge's amendment so that it would apply only to carriers "for the pub lic' or "to transportation for hire" or "for compensation." Senator Lodge vigorously opposed such modification of the wording, and declared that such a limitation would absolutely destroy the effectiveness of the proposed legislation. He said:

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment. (40 Cong. Rec., p. 7000.)

Moreover, it cannot seriously be contended that the statute is unconstitutional as applied to plaintiff. In *The Pipe Line Cases*, 234 U. S. 548, 561, it was expressly held that "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid." This ruling clearly precludes any question as to the constitutionality of the act as applied to appellant. Appellant's pipe line was not constructed until after 1935, long after the enactment of the original pipe line provision and its amendment in 1920.

Appellant's entire case is based upon what Mr. Justice Holmes says with respect to the Uncle Sam Oil Company in *The Pipe Line Cases*, 234 U. S. 548, 561–2.

> There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his home. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being

> merely an incident to use at the end. In that case the decree will be affirmed. In the others the decree will be reversed.

Discussing this passage, Mr. Justice Reed said in the *Valvoline* case, 308 U. S. 141, 146:

> The appellant relies upon the *Pipe Line Cases* to show that the present act does not cover a pipe line transporting oil for its own refining purposes only. The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the "sole purpose of conducting oil from its own wells to its own refinery." This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.

It is plain that appellant's operations do not fall within the terms of the exception described in the case of the Uncle Sam Oil Company. Appellant's pipe line does not transport oil from its own wells to its own refinery. Nor does appellant transport petroleum products "for its own use." It transports them for sale to the public. The products it transports through its pipe lines are not "for its own refining purposes only." Cf. *Valvoline* case, 308 U. S. 141, 146. On the contrary, appellant does not transport oil through its pipe line "until after preparation for market." Cf. *Valvoline* case, 308 U. S. 141, 143. The shipments made by appellant were not for

use in the refining process. They were for sale on the market of a completed product.

Moreover, in the *Uncle Sam* case the market price was the same at Bartlesville and Cherryvale, the two termini of the Uncle Sam Oil Company's pipe line. Appellant's sale price, however, at purchaser's destination differs from its sale price at the Enid refinery. Indeed, the difference is meticulously computed and separately stated in billing the purchaser. Since the product transported and sold by appellant is identical, in so far as its nature or processing is concerned, at both ends of the pipe line, this difference in value or market price at origin and at destination is attributable entirely to transportation, and is calculated in terms of freight rates. It is idle for appellant, which furnishes such transportation and collects a specific charge therefor, to contend that this amount paid by the purchaser is not a charge made for transportation and representing compensation to appellant for transporting the product from Enid through the pipe line to the respective terminals.

Hence it is submitted that appellant has not brought itself within the exception of the *Uncle Sam* case, and that the case at bar is controlled by the *Valvoline* and *The Pipe Line Cases*. Unless the distinction between a "crude oil" pipe line and a "products" line carrying refined petroleum products to market is deemed determinative, it would seem that the case at bar is plainly governed by the decision in the *Valvoline* case. It is submitted that the difference between a "crude oil" line and a "products"

line is of no legal significance. Indeed the *Valvoline* decision would seem to apply *a fortiori* to appellant, inasmuch as a company transporting crude oil might much more plausibly assert that what it transported was simply raw material for its own use at its refinery than appellant could claim that finished products moving to the market were destined for its own use. The Interstate Commerce Act is not to be thwarted by technicalities with respect to the time and place where title passes. *The Pipe Line Cases*, 234 U. S. 548, 560, *Rearick* v. *Pennsylvania*, 203 U. S. 507, 512.

By making a sale f. o. b. purchaser's destination or at the pipe line terminal, appellant would obtain an advantage which it clearly could not enjoy if the same products, transported in the same manner, were sold f. o. b. Enid refinery. But it was expressly held in *The Pipe Line Cases* (234 U. S. 548, 560) that the application of the act could not be circumvented by the artifice requiring that transfer of title take place prior to the commencement of transportation over the pipe line. Similarly it would seem clear that appellant should not be permitted to defeat the applicability of the act by requiring that transfer of title shall not take place until after the transportation by pipe line has been completed.

In *The Pipe Line Cases* the companies involved "imposed as a condition to the carriage a sale to themselves" before the transportation commenced. The Court held that it would be "a sacrifice of fact to form" to exempt them on that account from com-

pliance with the act (234 U. S. at 560).. The same would be true here if appellant were permitted to obtain exemption from the regulatory statute by the device of imposing, as a condition to the transportation by means of its pipe line, a sale to be consummated upon completion of the transportation.

The power of Congress to legislate against evils connected with transportation by pipe line is not dependent upon technical niceties, but is equally effective to protect the public at either end of the pipe line. Purchasers to whom the pipe line company sells, as well as the sellers from who it buys, are entitled to the benefits afforded by the statutory provisions regulating transportation by pipe line. In each case the transportation is an essential element in a course of business which involves dealing with the public, and not merely a movement of raw material by the company from its wells to its refinery for its own use in connection with its refining operations.

It is evident that to come within the exception laid down by Mr. Justice Holmes in the case of Uncle Sam Pipe Line Company the pipe line company must be transporting oil from its own wells to its own refinery for its own use. The *Valvoline* case shows that if oil is transported which was bought by the pipe line company from other producers and then transported, the exception does not apply. It seems equally plain that the exception should not apply where, following completion of the pipe line transportation, petroleum products are sold to (instead of

purchased from) members of the public. It seems evident that no legal significance inheres in the distinction between a "crude oil" line bringing crude oil to the refinery and a "products" pipe line transporting finished petroleum products from the refinery. Consequently, the case at bar is not distinguishable from the *Valvoline* case.

For the foregoing reasons, it is evident that this appeal presents no substantial question. It is, therefore, respectfully submitted that the judgment of the district court should be affirmed.

HUGH B. COX,
Acting Solicitor General.

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